



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

March 25, 2024

Via Electronic Filing

Molly C. Dwyer, Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

RE: *Planned Parenthood Great Northwest, Hawaii, Alaska, et al. v. Raúl Labrador, et al.*,
Case No. 23-35518

Scheduled for oral argument on March 27, 2024

Dear Ms. Dwyer,

FBI v. Fikre is a voluntary cessation case. The FBI put the petitioner on the No Fly List and took then him off after it was sued. No. 22-1178, slip op. at 1 (U.S. Mar. 19, 2024). The FBI argued the case was moot, but its argument was rejected because, under the facts of the case, its enforcement action could “reasonably be expected to recur.” *Id.* at 5–7.

Planned Parenthood v. Labrador is not a voluntary cessation case: The Attorney General cannot stop enforcing the Defense of Life Act because he never started. Unlike the FBI in *Fikre*, he never took any action against Appellees—he sent a private opinion to a legislator, the opinion was published without his knowledge, and then he was sued.

Instead, as the Attorney General’s previous 28(j) letter discussed, *Planned Parenthood v. Labrador* is a disavowal case. 3-ER-134 (“he has not enforced the interpretation [], is not enforcing it, and will not enforce it”). And because the Attorney General has never enforced the statutory interpretation in question, the Court has no reason to doubt his disavowal. *See* Dkt. #44 at 22 (distinguishing this Court’s *Fikre* opinion on this basis).

Appellees continue to insist that the Attorney General must disavow not only enforcement of the law but also his previous interpretation of the law. On this point, *Fikre* does shed some light:

[O]ften a case will become moot even when a defendant vehemently insists on the propriety of the conduct that precipitated the lawsuit. What matters is not whether a defendant repudiates its past actions, but what repudiation can prove about its future conduct.

Slip op. at 8–9 (cleaned up).

Aside from that reminder, *FBI v. Fikre* has no effect on this case. *Fikre* affirmed a Ninth Circuit decision using essentially the Ninth Circuit’s reasoning. *See* slip op. at 4–6. The governing law in the Ninth Circuit remains the same as it did before *Fikre* was decided.

The body of this letter contains 324 words.

Respectfully submitting,

A handwritten signature in blue ink, appearing to read "Alan M. Hurst", with a stylized, flowing script.

Alan M. Hurst
Solicitor General
(208) 332-3548
Counsel for Raúl Labrador, et al.